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**DEC 30 2004**

**OFFICE OF PETITIONS**

In re Application of  
Martinez et al.  
Application No. 09/880/498  
Filed: June 13, 2001  
Attorney Docket No. 87264-100

**DECISION GRANTING PETITION**

This decision is in response to Applicants response to applicants' "Petition for Patent Term Adjustment Under 37 CFR 1.705(b)" filed on April 9, 2004 requesting that the patent term adjustment determination at the time of the mailing of the notice of allowance be adjusted from seventy-three (73) days to two hundred and ten days.

Applicants petition is **GRANTED**.

The Office will adjust the PTA calculation reflected in the PAIR screen to accurately reflect a determination of two hundred and ten (210) a the time of the mailing of the notice of allowance. This determination made change (either greater or less) depending on specific events occurring after the mailing of the notice of allowance.

Applicants argue that the applicants did not fail to reply to any sequence requirement within three months of the mailing of such notice by the Office. Applicant argue that pursuant to 37 CFR 1.704(b) applicants have three months to reply to a notice from the Office regardless of the shortened statutory period set by the Office.

Applicants arguments are persuasive. The record reflects that the applicants replied to every notice mailed by the Office within three (3) months and accordingly should not have been considered a PTA reduction. Accordingly, the record should reflect that the Office failed to mail a first notice pursuant to 35 U.S.C. 132 within fourteen months of the filing date of the application, by two hundred and ten (210) days. See 37 CFR 1.702(a)(1). The record should further reflect that applicants did not fail to engage in any reasonable efforts to conclude prosecution of the application and accordingly two hundred and ten (210) days is the correct determination.

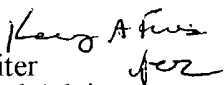
The Office notes the delay in deciding this petition and notes that the applicants will receive additional PTA due to the Office's failure to issue the application within four months of the payment of the issue fee. This additional PTA will be added at the time of the issuance of the issue notification letter and will be reflected in the issue notification letter.

The Office has assessed the \$200.00 fee for this petition. No additional fees are required.

Application No. 09/880/498

The application will be forwarded to the Office of Patent Publication for a prompt issuance of such application.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

  
Karin Ferriter  
Senior Legal Advisor  
Office of Deputy Commissioner  
For Patent Examination Policy

Encl. Adjusted Pair Calculation